

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RICHARD D. LIEBERMAN
McCarthy, Sweeney, & Harkaway, PC
2175 K Street, N.W.
Suite 600
Washington, DC 20037

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS
810 Vermont Ave., N.W.
Washington, D.C. 20420

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, to order the production of agency records relating to invoices and orders for packaging and shipping supplies at the Dallas, Texas Consolidated Mail Outpatient Pharmacy ("CMOP") between January 1, 2007 and February 20, 2007. The Freedom of Information Act Request is identified by our reference number MSH-2007-4.
2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).
3. Plaintiff, Richard D. Lieberman is a partner of the firm McCarthy, Sweeney and Harkaway, PC. Mr. Lieberman is the requester of the agency records that have been improperly withheld.

4. Defendant, The Department of Veterans Affairs (“VA”) is an agency of the United States, and has possession of and control over the records that plaintiff seeks.

5. By letter sent by facsimile and certified mail on February 21, 2007 to Mr. Clay Johnson, the Freedom of Information Officer of the VA, Plaintiff requested “all invoices and orders placed for boxes, envelopes, bags, coolers, gel packs and all other packaging and shipping supplied in the last 51 days (i.e. from January 1, 2007 to February 20, 2007) for the Dallas, Texas Consolidated Mail Outpatient Pharmacy.”

6. Mr. Johnson responded in a letter dated February 15, 2007 that stated “Your request is denied under FOIA Exemption 4, [5 U.S.C. § 552(b)(4)] A total of 19 pages have been withheld in their entirety under the exemption cited above.” No other reason for the denial was provided in the letter.

7. Pursuant to 5 U.S.C. § 552 on May 7, 2007, Plaintiff appealed the decision of Mr. Johnson to the General Counsel of the VA to make a determination by either producing the requested documents or issuing a denial. 5 U.S.C. § 552(a)(6)(A)(ii) states that an agency is required to make a determination on a FOIA Appeal within 20 days, excepting weekends and public holidays. The VA failed to respond, providing neither a decision, nor the documents within the statutory 20 days. The VA merely advised that “[o]nce we receive the necessary information and/or documents from the VA facility in question, we will advise you as to when we expect to issue our final decision to you.”

8. Plaintiff has a statutory right to the records that he seeks. 5 U.S.C. § 552(b)(4) is inapplicable to the documents sought in the instant FOIA request and there is no other legal basis for the Defendant’s refusal to disclose them.

WHEREFORE, Plaintiff prays that this Court:

- (1) Declare that Defendant's refusal to disclose the records requested by Plaintiff is unlawful;
- (2) Order Defendant to make the requested records available to Plaintiff;
- (3) Award Plaintiff his costs and reasonable attorneys fees in this action; and
- (4) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By _____
Richard D. Lieberman
DC Bar No. 419303
McCarthy, Sweeney and Harkaway, PC
2175 K Street, NW
Suite 600
Washington, DC 20037
Telephone: (202) 775-5560
Facsimile: (202) 293-5574
Attorney for Plaintiff

Dated: